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BOOK REVIEWS

DUE PROCESS OF LAW under the Federal Constitution. By Lucius Polk McGehee, Professor of Law in the University of North Carolina. Northport, Long Island, N. Y.: Edward Thompson Co., 1906, pp. x, 451.

Professor McGehee's volume in the series of "Studies in Constitutional Law" is the result of an undertaking to present the law of the subject as developed in the opinions of the Supreme Court of the United States.

The author is quite justified in the statement in his preface to the effect that "No richer or more interesting field could offer itself to the student." Here opens for investigation that most fascinating topic of *jurisdiction* as involved in due process of law, both of the person and of the *res*, including that most troublesome class of cases for the dissolution of the marital bond.

Here must be discussed too, the subject of *rights* embraced in this protecting clause of the constitution. What is it to have a right to "life, liberty or property" which can be disturbed but by *due process of law*?

The power of *taxation* and the procedure for its exercise involve submission to the requirements of this constitutional guaranty, and the principles which underlie this power and its exercise must be sought out, defined and applied.

And again, the power of *eminent domain* is an element of sovereignty often disturbing the rights of the citizen and one who would treat of *due process* must point the way for the taking of private property for a private use against owner's objection and must define a "taking," a "public use," "compensation" and extract the governing principles which must be regarded if the power is lawfully exercised.

The *police* power of the state recognizes no right so sacred that it may not be invaded in the interest of the general welfare if only *due process* be observed, and one who points the way clearly in this field must needs be a careful and discriminating teacher. Here is involved the right of the state to determine the character of one's employment, the length of his daily service, the limitation of his compensation for services in many fields of endeavor and many other problems scarcely less intricate and difficult of solution.

Professor McGehee has not exhausted these fields or any of them, nor does he claim to have done so. The last word has not been spoken by any one on these subjects or any of them, nor will it ever be spoken. As an illustration of the brevity of his treatment of particular topics might be noted this paragraph which embraces what he has to say on the subject of the state's regulation of *hours of labor*: "The hours of labor may be limited. (Citing *Holden v. Hardy*, 169 U. S. 366). The legislative action may extend no further than the limitation of working hours for certain classes, as women and children, to whom prolonged employment at labor otherwise harmless is considered especially dangerous. (Citing, *Com. v. Hamilton Mfg. Co.*, 120 Mass. 383). And the state may absolutely interdict certain employments to children although

their parents approve of such employment for them. (Citing, *People v. Ewer*, 141 N. Y. 129).

This treatment is not primarily for the practitioner, though instructive to him, but presents the results of the studies of a student of the law for the benefit of students of the law. The emphasis is on the theoretical rather than the practical, though the discussion is founded in the decisions of the courts.

The book as a whole is well written and instructive, and Chapters II, on the "Elements of Due Process," and IX, on the "Police Power" are particularly good.

V. H. L.

THE CONTROL OF PUBLIC UTILITIES in the form of an annotation of the Public Service Commissions Law of the State of New York and covering all important American cases. By William M. Ivins and Herbert Delavan Mason of the New York Bar. New York: Baker, Vorhies & Co., 1908, pp. lxxvii, 1149.

This book is intended primarily for those who desire to make use of the Public Service Commissions Law of the state of New York, a law, it will be remembered, which perhaps is the most significant and carefully devised of those state enactments designed to secure adequate control over public service industries. It contemplates a certain degree of administrative supervision over water, gas, electric and power companies, as well as over urban, inter-urban and commercial transportation. Provision is made by the law for securing to the public adequate facilities and service at a reasonable price and on the basis of a reasonable capitalization. It is claimed by its friends to be the latest word on government by Commissions. The act received the approval of Governor Hughes June 6, 1907.

It is natural that the passage of an act of such moment as the one creating the Public Service Commission of New York should attract the attention of the legal commentator. The appearance of some book covering the ground of the one under review was inevitable. As stated in the preface, it is designed as "a working volume, adequately indexed, which will bring together in their relation to the New York law the important cases decided by our American Courts in the matter of the regulation of public utilities corporations," and from this point of view there is, so far as I am able to judge, nothing to criticise and much to commend. Its table of contents is comprehensive and its indices are clear and devised according to a simple plan. Assuming one to be acquainted with the phrasings of the act, or of the general provisions of its several sections, the book will serve as an easy and a safe guide to the study of any particular problem. What is astounding is the amount of material which the authors have brought together. The Federal Act of 1887 for the regulation of interstate commerce called forth a little book by Dos Passos. It was a small octavo of 125 pages, coarse print and wide margins. The book under review, published twenty years after, contains 1149 pages of the usual law-book size, and makes considerable use of small type. The significant fact being that a large part of material presented is the result of court decisions and commission opinions of the two decades since the passage of the Federal